

## Exhibit 4

SENDER COMPLETE THIS SECTION		ADDRESSEE COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee  <i>X R. Harris</i></p>	
<p>1. Article Addressed to:</p> <p>U.S. Army Corps of Engineers  N.O. District Office of Counsel CEMVN-OC  ATTN: Mr. Frederick Wallace  P.O. Box 60267  New Orleans, Louisiana 70160-0267</p>		<p>B. Received by (Printed Name)  <i>ED</i></p> <p>C. Date of Delivery  SEP 9 2011</p>	
<p>2. Article Number  (Transfer from service label)  7010 1870 0000 5143 9280</p>		<p>D. Is delivery address different from item 1?  If YES, enter delivery address below:</p> <p>SEP 9 2011</p>	
<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail    <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered    <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail    <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee)    <input type="checkbox"/> Yes</p>	

PS Form 3811, February 2004      Domestic Return Receipt      102595-02-M-1540

**From:** [MVN-OC-FOIA](#)  
**To:** [Anne Adams](#)  
**Subject:** Read: 7564-06 Freedom of Information Act Request on behalf of Circle, Inc.  
**Date:** Friday, September 09, 2011 10:26:26 AM

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Your message

To: MVN-OC-FOIA; Wallace, Frederick W MVN  
Cc: 'Matt O'Brien'; mjwolfe@circleconstructionllc.com; 'W. Lee Kohler'  
Subject: 7564-06 Freedom of Information Act Request on behalf of Circle, Inc.  
Sent: Thu, 8 Sep 2011 14:34:00 -0500  
was read on Fri, 9 Sep 2011 10:24:46 -0500

# Message Confirmation Report

SEP-08-2011 02:50 PM THU

Fax Number : 5048327223  
Name : GARDNER & KEWLEY

Name/Number : 8622827  
Page : 11  
Start Time : SEP-08-2011 02:48PM THU  
Elapsed Time : 02'15"  
Mode : STD ECM  
Results : [O.K]

## GARDNER & KEWLEY

A PROFESSIONAL LAW CORPORATION

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E-MAIL: [kohlerr@baylorlaw.com](mailto:kohlerr@baylorlaw.com)

W. LEE KOHLER

Licensed in Louisiana & Texas

September 8, 2011  
7564-06

**VIA FACSIMILE: (504) 862-2827, 11 PAGES**  
**& VIA E-MAIL: [MYN-OC-FOIA@usace.army.mil](mailto:MYN-OC-FOIA@usace.army.mil) &**  
**[Frederick.W.Wallace@usace.army.mil](mailto:Frederick.W.Wallace@usace.army.mil)**  
**AND VIA U.S. CERTIFIED MAIL**  
**7010 1870 0000 5143 9280**  
**RETURN RECEIPT REQUESTED**

U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
ATTN: Mr. Frederick Wallace  
P.O. Box 60267  
New Orleans, Louisiana 70160-0267

RE: **FREEDOM OF INFORMATION ACT REQUEST**

PROJECT: **CONTRACT NO. W912P8-09-D-0052, TASK ORDER NO. 004**  
**ST. CHARLES PARISH LEVEE, REACH 1A FROM CROSS**  
**BAYOU TO ST. ROSE AND GULF SOUTH FLOODWALL -**  
**PHASE 2, LPV-04.2A**

Dear Sir or Madam:

On June 29, 2011, the undersigned, as counsel for and on behalf of Circle, Inc., submitted a Freedom of Information Act ("FOIA") request to the Corps of Engineers ("Corps"). Enclosure 1. To date, the Corps has not provided any documents in response to the attached FOIA request, nor has the Corps provided an estimated completion date for the FOIA request and the reason for the delay. Please advise the undersigned of the status of the attached FOIA request and the estimated completion date.

On August 1, 2011, the undersigned sent a letter to the Corps inquiring about the status of the Corps' response to the FOIA request. Enclosure 2. On or about August 10, 2011, Mr. Frederick Wallace, the Corps' FOIA officer, responded to the August 1-Letter by telephoning Mr. Gardner. Mr. Wallace advised that the Corps was gathering the documents responsive to Circle's FOIA request, and would allow Circle representatives to review the documents at the Corps' office. Mr. Wallace advised that the documents would be ready for review sometime during the week of August 15-19,

FOIA\_cve\_756406\_090911\_mktaspe#F.wpd

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September 8, 2011  
7564-06

**VIA FACSIMILE: (504) 862-2827, 11 PAGES**  
**& VIA E-MAIL: MVN-OC-FOIA@usace.army.mil &**  
**Frederick.W.Wallace@usace.army.mil**  
**AND VIA U.S. CERTIFIED MAIL**  
**7010 1870 0000 5143 9280**  
**RETURN RECEIPT REQUESTED**

U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
ATTN: Mr. Frederick Wallace  
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U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
Mr. Frederick Wallace  
September 8, 2011  
Page 2

2011, and that Mr. Wallace would contact the undersigned when the documents were ready for review.

Since the date of that telephone conversation, we have heard nothing further from the Corps with respect to Circle's FOIA request. On August 24, 2011, Mr. Gardner emailed Mr. Wallace, again inquiring about the status of the Corps' response to Circle's FOIA request. Enclosure 3. The Corps has not responded to Mr. Gardner's email.

We recognize that responding to FOIA requests takes time and that delays can be expected. However, in light of Mr. Wallace's prior communications, we had expected that the documents would already have been made available for Circle's review. If the Corps anticipates further delays in responding to Circle's FOIA request, we ask that the Corps provide us with a date when the documents will be ready for Circle's review.

Within ten days of receipt of this letter:

1. Please confirm in writing that the Corps is working on a response.
2. Please advise the undersigned of the status of the response to the attached FOIA request, and
3. Please advise the estimated response completion date.

If the Corps does not respond in writing to item nos. 1-3 within the time period set forth above, Circle will presume that the Corps has no intention of responding to the request, in which case, Circle will initiate litigation to compel the Corps to respond.

Sincerely,



W. LEE KOHLER

WLK/asa

Enclosures: 1. June 29, 2011 Freedom of Information Act Request (w/out exhibits).  
2. August 1, 2011 Letter to Corps.  
3. August 24, 2011 Email to Corps.

U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
Mr. Frederick Wallace  
September 8, 2011  
Page 3

cc: Mr. Matt O'Brien, Senior Project Manager  
Circle, Inc. (w/enclosures)  
(Via E-Mail Only: mobrien@circleconstructionllc.com)

Mr. M.J. Wolfe, Jr., President  
Circle, Inc. (w/enclosures)  
(Via E-Mail Only: mjwolfe@circleconstructionllc.com)

Enclosure 1

**GARDNER & KEWLEY**

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W. LEE KOHLER

Licensed in Louisiana & Texas

June 29, 2011  
7564-06

**VIA U.S. CERTIFIED MAIL**  
**7010 1870 0000 5143 5633**  
**RETURN RECEIPT REQUESTED**  
**& VIA E-MAIL: MVN-OC-FOIA@usace.army.mil**

U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
ATTN: FOIA Coordinator  
P.O. Box 60267  
New Orleans, Louisiana 70160-0267

**RE: FREEDOM OF INFORMATION ACT REQUEST**

**PROJECT: CONTRACT NO. W912P8-09-D-0052, TASK ORDER NO. 004  
ST. CHARLES PARISH LEVEE, REACH 1A FROM CROSS  
BAYOU TO ST. ROSE AND GULF SOUTH FLOODWALL -  
PHASE 2, LPV-04.2A**

Dear Sir or Madam:

Under the Freedom of Information Act, 5 U.S.C. § 552, Circle, Inc., acting through undersigned counsel, requests that the Corps of Engineers provide Circle, Inc. with copies of the following identified documents and categories of documents:

**DEFINITIONS**

"Corps" shall mean the United States Army Corps of Engineers.

"Buck Town" shall mean Buck Town Contractors & Co.

"Circle" shall mean Circle, Inc.

"Eustis" shall mean Eustis Engineering Services, L.L.C.



U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
Freedom of Information Act Officer  
June 29, 2011  
Page 2

"Project" shall mean the public works project for improvements to a levee located in St. Charles Parish, Louisiana, which is the subject of U.S. Army Corps of Engineers Contract No. W912P8-09-D-0052, Task Order No. 0004.

"Levee Reach 1A" shall mean the earthen levee located in St. Charles Parish, Louisiana, which is the subject of the U.S. Army Corps of Engineers Contract No. W912P8-09-D-0052, Task Order No. 0004.

"Deficiency Notice No. 1" shall mean the notice of contract deficiency, dated March 25, 2010, issued by the Corps to Buck Town in connection with the Project. For reference purposes, a copy of Deficiency Notice No. 1 is attached hereto as Exhibit "A."

"Eustis Reports" collectively refers to the correspondence and/or reports issued by Eustis dated December 6, 2010, December 16, 2010, and December 22, 2010, which were provided to the Corps, and which reports contain Eustis' calculations and analyses of the factor of safety for Levee Reach 1A. For reference purposes, copies of the Eustis Reports are attached hereto as Exhibit "B."

"Alternate Levee Section" shall mean the alternate design for the levee profile, developed by the Corps, for corrective work to Levee Reach 1A and described in the Corps' November 19, 2010 letter and accompanying drawings. For reference purposes, the Corps' November 19, 2010 letter and accompanying drawings are attached hereto as Exhibit "C."

#### **DOCUMENT REQUESTS**

1. Any and all plans, drawings, notes, reviews, analyses, reports, calculations, technical evaluations, correspondence, e-mails, memoranda, meeting minutes or other documents of any kind which discuss, describe or relate to the design criteria, design parameters, and/or design factors of safety for the Project and/or, for the Alternate Levee Section.
2. Any and all notes, reports, correspondence, memoranda, e-mails, analyses, quality control reports, quality assurance reports, meeting minutes, or other documents of any kind, prepared by employees, agents, or representatives of the Corps, during the time period October 1, 2009 to present, which in any way discuss, describe or relate to the performance



U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
Freedom of Information Act Officer  
June 29, 2011  
Page 3

of the work by Buck Town in connection with the construction of the Project.

3. Any and all notes, correspondence, e-mails, reports, daily reports, memoranda, quality control reports, quality assurance reports, meeting minutes, or other documents of any kind, in any way relating to the Project, generated or prepared by any of the following individuals:
  - (a) Sheila W. Enclade
  - (b) Jeffrey J. Falati
  - (c) Bobby Akins
  - (d) Stuart Waits
  - (e) Mike Hudson
  - (f) Raul Diaz
  - (g) William Tholborn
  - (h) Perry D'Amica
  - (i) Otho Barnes
  - (j) Jamie Farmer
  - (k) Bennie Benson
  - (l) Lacie Petitto
  - (m) Violet Albright
  - (n) Mitchell D. Thomas
  - (o) Carl Anderson
  - (p) Bradley Durant.
4. Any and all notes, reports, correspondence, e-mails, memoranda, analyses, or other documents of any kind, prepared by employees, agents, inspectors or representatives of the Corps, during the time period October 1, 2009 to present, which in any way discuss, describe or relate to Buck Town's work and/or to the processing of Buck Town's payment applications in connection with the construction of the Project.

U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
Freedom of Information Act Officer  
June 29, 2011  
Page 4

5. Any and all notes, reports, studies, calculations, analyses, or other documents of any kind, which discuss, describe or relate to any analysis or evaluations performed by or determination made by the Corps that those portions of the Project constructed by Buck Town, which are the subject of Deficiency Notice No. 1, attached as Exhibit A, did not meet the factor of safety to which the Project was designed or otherwise failed to meet the requirements of the design criteria.
6. Any and all analyses, evaluations, calculations, or studies undertaken by the Corps to determine the factor of safety for Levee Reach 1A, as it was constructed by Buck Town with the alleged deficiency identified by the Corps in Deficiency Notice No. 1. Exhibit A.
7. Any and all analyses, evaluation, calculations, or studies undertaken by the Corps to evaluate the results described in any of the Eustis Reports.
8. Any and all correspondence, notes, memoranda, or other documents of any kind, in any way discussing, describing or relating to the Eustis Reports.
9. Any and all correspondence, notes, memoranda, or other documents of any kind, in any way discussing, describing or relating to meetings held by and/or between the Corps, Buck Town, and/or Eustis concerning the alleged deficiency which is the subject of Deficiency Notice No. 1.
10. Any and all correspondence, notes, memoranda, or other documents of any kind, in any way discussing, describing or relating to meetings held by the Corps, concerning the Project and/or the alleged deficiency which is the subject of Deficiency Notice No. 1.
11. Any and all analyses, evaluations, calculations, designs or studies undertaken by the Corps to develop the Alternate Levee Section.
12. Any and all correspondence, memoranda, notes, reports, studies, analyses, or other documents of any kind, in any way discussing, describing or relating to the development of the Alternate Levee Section.

U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
Freedom of Information Act Officer  
June 29, 2011  
Page 5

13. Any and all photographs, digital images, videos or other visual depictions of the work performed by Buck Town or Circle in connection with the Project.

Please supply the records without informing me of the cost if the fees do not exceed \$750.00, which I agree to pay. Please return the documents to the attention of W. Lee Kohler, Esq., Gardner & Kewley, APLC, 1615 Metairie Road, Suite 200, Metairie, Louisiana 70005. Please advise if the Corps would prefer to make the documents available for inspection at the Corps' office.

If you deny any part or all of this request, please cite each specific exemption you think justifies your refusal to release the information requested and notify me of appeal procedures available under the law.

If you have any questions about handling this request, please contact me or Thomas F. Gardner, Esq. at: Gardner & Kewley, A.P.L.C., 1615 Metairie Road, Suite 200, Metairie, LA 70005, Telephone (504) 832-7222, Email: [kohler@bayoulaw.com](mailto:kohler@bayoulaw.com) or [gardner@bayoulaw.com](mailto:gardner@bayoulaw.com). I thank you for your cooperation.

Sincerely,



W. LEE KOHLER  
Counsel for Circle, Inc.

- Enclosures: 1. Exhibit A - Deficiency Notice No. 1  
2. Exhibit B - Eustis Reports  
3. Exhibit C - November 19, 2010-Letter

Enclosure 2

**GARDNER & KEWLEY**  
A PROFESSIONAL LAW CORPORATION

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W. LEE KOHLER

Licensed in Louisiana & Texas

August 1, 2011  
7564-06

**VIA FACSIMILE: (504) 862-2827, 7 PAGES**  
**& VIA E-MAIL: MVN-OC-FOIA@usace.army.mil**  
**AND VIA U.S. CERTIFIED MAIL**  
**7010 1870 0000 5143 9198**  
**RETURN RECEIPT REQUESTED**

U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
ATTN: FOIA Coordinator  
P.O. Box 60267  
New Orleans, Louisiana 70160-0267

RE: **FREEDOM OF INFORMATION ACT REQUEST**

PROJECT: **CONTRACT NO. W912P8-09-D-0052, TASK ORDER NO. 004**  
**ST. CHARLES PARISH LEVEE, REACH 1A FROM CROSS**  
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We recognize that responding to FOIA requests takes some time and that some delays can be expected. However, by this point, we had expected to receive, at a minimum, some communication from the Corps acknowledging receipt of the FOIA request, advising us of the identity of the responding officer, and advising us when a formal response could be expected. If the Corps anticipates continued delays in responding to this FOIA request, we would be willing to assist the Corps with the response by making arrangements to review the Corps' documents in the Corps' office.

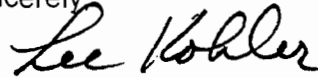
U.S. Army Corps of Engineers  
New Orleans District Office of Counsel (CEMVN-OC)  
Freedom of Information Act Officer  
August 1, 2011  
Page 2

Within ten days of receipt of this letter:

1. Please acknowledge receipt of the FOIA request,
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If the Corps does not respond to item nos. 1-4 within the time period set forth above, Circle will presume that the Corps has no intention of responding to the request, in which case, Circle will initiate litigation to compel the Corps to respond.

Sincerely



W. LEE KOHLER

WLK/asa

Enclosure: June 29, 2011 Freedom of Information  
Act Request (w/out exhibits)

Enclosure 3

**From:** Thomas F. Gardner [gardner@bayoulaw.com]  
**Sent:** Wednesday, August 24, 2011 10:45 AM  
**To:** 'Wallace, Frederick W MVN'  
**Cc:** gardner@bayoulaw.com; kohler@bayoulaw.com  
**Subject:** FOIA Requests from Circle - Reach 1A Project; W912P8-09-D-0052 Task Order No. 0004 7564-06

Dear Fred:

A couple of weeks ago we spoke about the USACE allowing Circle to inspect the files under the pending FOIA Requests for the following Project:

W912P8-09-D-0052 Task Order No. 0004  
Lake Pontchartrain and Vicinity, Louisiana Project  
North of Airline Highway, St. Charles Parish  
Levee Reach 1A from Cross Bayou to St. Rose and Gulf South Floodwall  
Phase 2, LPV-04.2A

At that time we discussed reviewing the files in your office (as I and others did in the In Re Katrina and SELA matters), and then designating which files would be sent out for duplication. Based on our conversation, I noted on my calendar that the USACE's production of records would likely happen during the week of August 15, 2011. Since we are now beyond the initial production week, please advise when the USACE's files will be available for inspection. Thank you.

Best regards,

Tom Gardner

Thomas F. Gardner, Esq.

GARDNER & KEWLEY  
A Professional Law Corporation  
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Suite 200  
Metairie, Louisiana 70005  
Telephone: (504) 832-7222  
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